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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 ALL NIPPON AIRWAYS COMPANY,)
23 LTD.,)
24 Plaintiff,)
25 vs.)
26 UNITED AIR LINES, INC.,)
27 Defendant.)

Case No. C07-03422 EDL

**DECLARATION OF MARSHALL
S. TURNER IN OPPOSITION TO
DEFENDANT'S MOTION TO
COMPEL AND FOR
PROTECTIVE ORDER**

DECLARATION OF MARSHALL S. TURNER

28 STATE OF NEW YORK)
) SS.
)
COUNTY OF NEW YORK)

Marshall S. Turner, being duly sworn, deposes and says:

1. I am an attorney and a member of the law firm of Condon & Forsyth LLP,
attorneys for plaintiff All Nippon Airways Co., Ltd. ("ANA") in the above-

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captioned matter. I make this declaration in Opposition to Defendant's Motion to Compel Production of Person Most Knowledgeable and for Protective Order.

2. On September 12, 2007, UAL served ANA with deposition notices and document requests for the three ANA pilots on board Flight NH007 at the time of the Accident as well as a "Person Most Knowledgeable" (hereinafter referred to as "PMK") concerning the Standard Ground Handling Agreement ("SGHA") pursuant to FRCP 30(b)(6). See Exhibit A annexed hereto.

3. In my letter of August 30, 2007, I advised UAL that the SGHA referred to in and attached to United's Counter-Complaint could not possibly have anything to do with any issue in this case, and that ANA would not produce a witness on this subject until UAL establishes some basis for its allegations concerning the SGHA. See Exhibit B. UAL provided no response to my letter of August 30, 2007.

4. I participated with UAL's counsel in a telephonic Rule 26(f) conference on September 10, 2007, during which UAL requested a deposition of a witness with knowledge of the SGHA. I advised UAL's counsel that ANA would not agree to production of such a witness unless UAL would explain the relevance of the 1991 SGHA their pleadings were based upon to the 2003 Accident.

5. I again advised UAL's counsel in my letter of September 14, 2007 that no witness would be provided concerning the SGHA without an explanation of the relevance of the SGHA and why any question regarding the SGHA could not be answered through interrogatories or admissions. See Exhibit C annexed hereto. UAL offered no explanation in response to this request.

6. In my letter of September 28, 2007, I clearly explained that the 1991 SGHA attached to UAL's Counter-Complaint is outdated on its face and could not possibly apply to the Accident in 2003. See Exhibit D annexed hereto. I advised that UAL's Counter-Complaint relies upon the SGHA Main Agreement and Annex A signed by United on July 23, 1991 and by ANA on August 14, 1991, while the

1 Annex B attached thereto and dated September 25, 2001 plainly states, "the terms
2 of the Main Agreement and Annex A of the SGHA of April 1998. . . shall apply as
3 if such terms were repeated here in full." See UAL Counter-Complaint, Exhibit 1,
4 Annex B, page 1 PREAMBLE.

5 7. Also in my letter of September 28, 2007 I informed UAL that the Annex B
6 attached to UAL's Counter-Complaint in Exhibit 1 was also outdated and would
7 not have been applicable at the time of the Accident. Annex B.1.2 attached to
8 UAL's Counter-Complaint as in Exhibit 1 "is valid from: 25 September 2001"
9 and was replaced by Annex B.1.3 dated 25 September 2002, which was the
10 agreement in effect on October 7, 2003 at the time of the Accident. Copies of the
11 correct documents were provided along with my September 28, 2007 letter. See
12 Exhibit D attached hereto.

13 8. The correct Main Agreement and its Annexes that were in effect at the time
14 of the Accident on October 7, 2003 make no mention of UAL providing a service
15 to ANA of "Moving aircraft under its own power" or to any section of the SGHA
16 identified as "R.6.7.2." as alleged by UAL in paragraphs 23 and 31 of UAL's
17 Counter-Complaint. See UAL Counter-Complaint, Exhibit 1, as compared to the
18 correct agreements attached to Exhibit D.

19 9. I further explained that UAL's Ramp Controller's negligence was his
20 premature release of UAL Flight UA809 which was not "connected to" or "arose"
21 out of any service provided to ANA under the SGHA.

22 10. In my September 28, 2007 letter, I also invited UAL to come forward with
23 any information contrary to ANA's position and to amend its Answer and Counter-
24 Complaint to delete Counts Three and Four which were based upon the
25 indisputably wrong SGHA.

26 11. UAL never responded to my September 28, 2007 letter, nor has it sought to
27 amend its Answer or Counter-Complaint to allege the SGHA that was in effect at
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1 the time of the Accident.

2 12. UAL has conceded in its motion that the 1991 SGHA upon which it based
3 its Answer and Counter-Complaint is outdated and inapplicable to this matter. The
4 provision of the 1991 SGHA upon which it based its allegations of “moving
5 aircraft under its own power . . .” is not present in the 2002 SGHA that was in
6 effect at the time of the Accident. Compare Annex AR.6.7.2 attached to UAL’s
7 Counter-Complaint to Annex A Section 6.7.1 (no provision for moving aircraft
8 under its own power) attached to Exhibit D.

9 13. UAL has now recrafted its argument to rest entirely upon its own definition
10 of the term “marshalling” which is a service to be provided under Section 6.1.1 of
11 the 2002 SGHA, but provides no factual or legal basis to assert that the damages
12 are “connected with” or “arise out of” any marshalling service.

13 14. Aircraft marshalling is a function of an individual on the ground guiding an
14 aircraft with visual signals. See Federal Aviation Administration (“FAA”)
15 Aeronautical Information Manual Section 4-3-25, Exhibit E attached hereto; ASIC
16 GLOSSARY OF TERMS AND DEFINITIONS, Exhibit F attached hereto; NATO
17 GLOSSARY OF TERMS AND DEFINITIONS, Exhibit G attached hereto; and UAL’s
18 “Ramp Services Trainer Aircraft Guideperson & Wingwalker,” Exhibit H attached
19 hereto.

20 15. Pursuant to agreements unrelated to any SGHA, UAL’s Ramp Controller
21 was performing FAA functions that had nothing to do with “marshalling” under
22 the SGHA.

23 16. In a Memorandum of Understanding effective December 4, 2000 between
24 the FAA and San Francisco Terminal Equipment Co. (“SFOTEC”), the FAA
25 delegated responsibility for the operation of Ramp Tower G at San Francisco
26 International Airport (“SFO”) to SFOTEC. In this agreement, the FAA delegated
27 responsibilities for directing aircraft in the area around Terminal G to SFOTEC.

1 See Exhibit I attached hereto.

2 17. In a Memorandum of Understanding effective December 1, 2000 between
3 SFOTEC and UAL, SFOTEC delegated its FAA responsibility for the operation of
4 Ramp Tower G at San Francisco International Airport to UAL. See Exhibit J
5 attached hereto.

6 18. In UAL's Declaration of Scott Torpey, paragraph 7, it is stated that it is
7 necessary to depose an ANA Person Most Knowledgeable on the issue of SGHA,
8 but no reason or relevance is explained. The SGHA is a form used by all
9 international airlines and the specific SGHA was prepared by UAL as "United
10 contract No. 108536-17" and was signed by UAL and ANA in 2002. See Annex B
11 attached hereto in Exhibit D.

12 19. The Ramp Controller is a UAL employee under the control of UAL. The
13 agreement giving UAL control of the Ramp Tower G was signed by a UAL
14 General Manager. See Exhibit J. UAL fails to identify any area of relevant
15 inquiry that could be supplied by an ANA witness knowledgeable about the
16 SGHA.

17 20. UAL avers that ANA has refused to enter into a Protective Order concerning
18 the confidentiality of documents. However, I engaged in negotiations with UAL
19 for precisely this purpose.

20 21. I first received UAL's proposed Protective Order from UAL's counsel Scott
21 R. Torpey with his letter dated October 2, 2007.

22 22. On October 5, 2007, I returned the proposed Protective Order to UAL's
23 counsel with my suggested changes. See Exhibit K attached hereto.

24 23. UAL's counsel commented on my suggested changes in his letter dated
25 October 8, 2007. See Exhibit L attached hereto.

26 24. I responded to UAL's counsel with responsive comments on October 8,
27 2007. See Exhibit M attached hereto.

1 25. I heard nothing further from UAL's counsel with respect to the proposed
2 Protective Order until receipt of UAL's Motion to Compel.

3 26. For the reasons set forth in the accompanying Brief, plaintiff All Nippon
4 Airways Co., Ltd. respectfully requests that the Court deny United Air Lines, Inc.'s
5 Motion to Compel Production of Person Most Knowledgeable and for Protective
6 Order; and issue a protective order that a deposition and documents may not be had
7 from an ANA witness concerning the SGHA.

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9 Dated: October 23, 2007

CONDON & FORSYTH LLP

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11 By: /s/ Marshall S. Turner

12 MARSHALL S. TURNER (*pro hac vice*)

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14 Attorneys for Plaintiff

15 ALL NIPPON AIRWAYS COMPANY, LTD.
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